

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

-----In the Matter of----- )  
 )  
PUBLIC UTILITIES COMMISSION ) DOCKET NO. 2007-0008  
 )  
Instituting a Proceeding To )  
Examine Hawaii's Renewable )  
Portfolio Standards Law, Hawaii )  
Revised Statutes §§ 269-91 - )  
269-95, as Amended by Act 162, )  
Session Laws of Hawaii 2006. )  
\_\_\_\_\_ )

ORDER NO. 23316

Filed March 23, 2007  
At 11 o'clock A.M.

Karen Higashi  
Chief Clerk of the Commission

DIV. OF CONSUMER ADVOCACY  
DEPT. OF COMMERCE AND  
CONSUMER AFFAIRS  
STATE OF HAWAII

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KAREN HIGASHI  
Chief Clerk, Public Utilities  
Commission, State of Hawaii.

Karen Higashi

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OF THE STATE OF HAWAII

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ORDER

By this Order, the commission: (1) notifies the Parties and Intervenors<sup>1</sup> herein that the documents indexed in the attached Exhibit A, which were submitted in connection with the commission's Act 95 workshops, have been filed and incorporated into this docket; and (2) determines the issues and procedural schedule that will govern in this proceeding, in response to the comments that were filed with the commission regarding the preliminary issue and procedural schedule set forth in Order No. 23191.

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<sup>1</sup>By Order No. 23191, filed on January 11, 2007 ("Order No. 23191"), which initiated this proceeding, the commission named as parties to this docket HAWAIIAN ELECTRIC COMPANY, INC. ("HECO"), HAWAII ELECTRIC LIGHT COMPANY, INC. ("HELCO"), MAUI ELECTRIC COMPANY, LIMITED, KAUAI ISLAND UTILITY COOPERATIVE, and the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate"), who are collectively referred to herein as the "Parties." By Order No. 23276, filed on February 23, 2007, the commission granted intervention in this docket to LIFE OF THE LAND ("LOL") and HAWAII RENEWABLE ENERGY ALLIANCE, who are jointly referred to herein as "Intervenors."

I.

Background

A.

Order No. 23191

By Order No. 23191, the commission initiated this proceeding pursuant to Act 162, Session Laws of Hawaii 2006 ("Act 162"), which amended Hawaii's Renewable Portfolio Standards ("RPS") Law, codified as Hawaii Revised Statutes ("HRS") §§ 269-91 - 269-95, by among other things, authorizing the commission to establish and issue penalties against electric utility companies who fail to meet the RPS.<sup>2</sup>

As explained in Order No. 23191, before the RPS Law was amended by Act 162, the commission was tasked to "develop and implement a utility ratemaking structure which may include but is not limited to performance-based ratemaking, to provide incentives to Hawaii's electric utility companies to use cost-effective renewable energy resources found in Hawaii to meet the [RPS.]"<sup>3</sup> To accomplish this task, the commission hosted two two-day workshops on November 22 - 23, 2004 and October 3 - 4, 2005, in which over seventy interested persons participated. The commission also hosted a technical workshop on October 5, 2005.

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<sup>2</sup>Under the RPS Law, RPS is defined as the percentage of electrical energy sales that is represented by renewable electrical energy. See HRS § 269-91. Each electric utility company that sells electricity for consumption in the State of Hawaii is required by law to meet the RPS of: (1) ten percent of its net electricity sales by December 31, 2010; (2) fifteen percent of its net electricity sales by December 31, 2015; and (3) twenty percent of its net electricity sales by December 31, 2020. See HRS § 269-92(a)(1)-(3).

<sup>3</sup>Act 95, Session Laws of Hawaii 2004.

In conjunction with each workshop, the commission prepared concept papers, and allowed participants to submit comments on the concept papers prior to the workshops. The commission received a wealth of information and comments, both written and oral, from the workshop participants.

In Order No. 23191, the commission found that, by mandating the establishment of a penalty structure in Act 162, the RPS Law now provides sufficient incentive to electric utilities to comply with the RPS. Thus, although the commission originally planned to hold a total of three RPS workshops and thereafter conduct rulemaking, the commission instead determined to proceed by way of investigatory docket.

The commission set forth a preliminary issue<sup>4</sup> and preliminary procedural schedule in Order No. 23191, and allowed the Parties and any intervenors and participants to comment on the preliminary issue and procedural schedule within forty-five days of the date of the Order. The commission also stated in Order No. 23191 that it would file in this docket, by separate order, information and comments received from the participants in the Act 95 workshops, pursuant to Hawaii Administrative Rules ("HAR") § 6-61-48.

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<sup>4</sup>The commission established the following preliminary issue for this proceeding: What is the appropriate penalty framework to establish under HRS § 269-92(c) for failure to comply with the RPS? See Order No. 23191, at 6.

B.

Preliminary Comments

On February 27, 2007, HECO filed comments on the preliminary issue and procedural schedule presented in Order No. 23191. In summary, HECO proposed that the following issues be addressed in this docket:

- (1) What is the appropriate penalty framework to establish under HRS § 269-92(c) for failure to meet the RPS?<sup>5</sup>
- (2) What is the appropriate framework to establish under HRS § 269-92(d) to determine whether an electric utility company is unable to meet the RPS due to reasons beyond the reasonable control of an electric utility?
- (3) What is the appropriate utility ratemaking structure to establish and include in the commission's RPS framework under HRS § 269-95 to provide incentives that encourage electric utilities to use cost-effective renewable energy resources found in Hawaii to meet the RPS, while allowing for deviation from the standards in the event that the standards cannot be met

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<sup>5</sup>HECO's proposed first issue slightly revises the language in the commission's preliminary issue as follows: "What is the appropriate penalty framework to establish under HRS § 269-92(c) for failure to ~~comply with~~ meet the RPS?" HECO explains that its proposed language more precisely reflects the language in HRS § 269-92(c), which provides, in relevant part: "If the public utilities commission determines that an electric utility company failed to meet the renewable portfolio standard . . . the utility shall be subject to penalties . . . provided that if the commission determines that the electric utility company is unable to meet the renewable portfolio standards due to reasons beyond the reasonable control of an electric utility, . . . the commission, in its discretion, may waive in whole or in part any otherwise applicable penalties." HRS § 269-92(c) (emphasis added).

in a cost-effective manner, or as a result of circumstances beyond the control of the utility that could not have been reasonably anticipated or ameliorated?

- (4) Should the commission's RPS framework include a provision that provides incentives to encourage electric utility companies to exceed their RPS or to meet their RPS ahead of time, or both, and if so, what is the appropriate incentive to establish under HRS § 269-94?<sup>6</sup>

In addition, HECO requested one change to the commission's preliminary procedural schedule, namely that the deadline for Simultaneous Preliminary Statements of Position, scheduled for April 23, 2007, be extended by three days, to April 26, 2007.<sup>7</sup>

On February 26, 2007, LOL filed "Preliminary Issues," which did not specifically comment on the commission's preliminary issue, but generally proposed that this docket should develop forms or procedures by which renewable energy projects that are proposed to utilities are accounted for, as they are proffered to, and considered by, the utilities.<sup>8</sup> No other Party or Intervenor submitted comments to the preliminary issue and procedural schedule set forth in Order No. 23191.

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<sup>6</sup>See HECO's letter dated and filed February 27, 2007, at 4.

<sup>7</sup>HECO made this request because HELCO and the Consumer Advocate are scheduled to file a settlement letter in HELCO's 2006 test year rate case (Docket No. 05-0315) on April 23, 2007.

<sup>8</sup>See LOL's Preliminary Issues, filed on February 26, 2007, at 2.

II.

Discussion

A.

Filed Documents

Given the wealth of information received by the commission in connection with the Act 95 Workshops, the commission has filed this information, which is indexed in the attached Exhibit A, in this docket, pursuant to HAR § 6-61-48. Copies of documents listed in Exhibit A may be reviewed at the commission's office.

B.

Issues

The commission finds that HECO's proposed Issue Nos. 1, 3, and 4 are reasonable and appropriate for consideration in this docket, and therefore, adopts those issues in this proceeding. The commission, however, declines to adopt HECO's proposed Issue No. 2 because the commission finds that HRS §§ 269-92(d)(1) through (11)<sup>9</sup> already provide ample guidance as to how the commission is to determine "whether an electric utility company is unable to meet the RPS due to reasons beyond the reasonable

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<sup>9</sup>HRS §§ 269-92(d) lists several specific examples of events or circumstances that are deemed outside of an electric utility company's reasonable control that could not have been reasonably foreseen and ameliorated, including: weather-related damage (HRS § 269-92(d)(1)); mechanical or resource failure (HRS § 269-92(d)(3)); inability to obtain permits or land use approvals for renewable electrical energy projects (HRS § 269-92(d)(8)); and a broad catch-all provision in HRS § 269-92(d)(11) for "[o]ther events and circumstances of a similar nature."

control of an electric utility," as posed by HECO's proposed Issue No. 2. Thus, the issues in this proceeding are:

- (1) What is the appropriate penalty framework to establish under HRS § 269-92(c) for failure to meet the RPS?
- (2) What is the appropriate utility ratemaking structure to establish and include in the commission's RPS framework under HRS § 269-95 to provide incentives that encourage electric utilities to use cost-effective renewable energy resources found in Hawaii to meet the RPS, while allowing for deviation from the standards in the event that the standards cannot be met in a cost-effective manner, or as a result of circumstances beyond the control of the utility that could not have been reasonably anticipated or ameliorated?
- (3) Should the commission's RPS framework include a provision that provides incentives to encourage electric utility companies to exceed their RPS or to meet their RPS ahead of time, or both, and if so, what is the appropriate incentive to establish under HRS § 269-94?

C.

#### Procedural Schedule

In response to the request made by HECO, the commission approves a three-day extension of the deadline for the filing of Simultaneous Preliminary Statements of Position, from April 23, 2007, to April 26, 2007. There being no other comments made to the preliminary procedural schedule by the Parties and Intervenors, the commission adopts the scheduled matters and deadlines set forth in the commission's preliminary procedural

schedule in Order No. 23191, with the exception of the deadline for Simultaneous Preliminary Statements of Position, which the commission extends by three days, as noted above.

### III.

#### Orders

##### THE COMMISSION ORDERS:

1. The documents indexed in Exhibit A, attached hereto, which were submitted in connection with the commission's Act 95 workshops, have been filed and are hereby incorporated into this docket, pursuant to HAR § 6-61-48.

2. The issues in this proceeding are:

- (1) What is the appropriate penalty framework to establish under HRS § 269-92(c) for failure to meet the RPS?
- (2) What is the appropriate utility ratemaking structure to establish and include in the commission's RPS framework under HRS § 269-95 to provide incentives that encourage electric utilities to use cost-effective renewable energy resources found in Hawaii to meet the RPS, while allowing for deviation from the standards in the event that the standards cannot be met in a cost-effective manner, or as a result of circumstances beyond the control of the utility that could not have been reasonably anticipated or ameliorated?
- (3) Should the commission's RPS framework include a provision that provides incentives to encourage electric utility companies to exceed their RPS or to meet their RPS ahead of time, or both, and if so, what is the appropriate incentive to establish under HRS § 269-94?

3. The procedural schedule set forth in Order No. 23191 is adopted, with one modification. Simultaneous Preliminary Statements of Position will now be due on April 26, 2007. In all other respects, the deadlines set forth in the procedural schedule in Order No. 23191 shall be utilized in this docket, unless otherwise ordered by the commission.

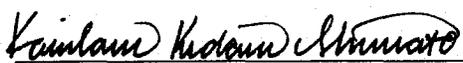
DONE at Honolulu, Hawaii MAR 23 2007.

PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By   
Carlito P. Caliboso, Chairman

By   
John E. Cole, Commissioner

APPROVED AS TO FORM:

  
Kaiulani Kidani Shinsato  
Commission Counsel  
2007-0008 rps.ac

**EXHIBIT A - INDEX**

**DOCUMENTS FROM ACT 95 WORKSHOPS FILED IN DOCKET NO. 2007-0008**

<b><u>NO.</u></b>	<b><u>DESCRIPTION</u></b>	<b><u>DATED</u></b>
1.	Electric Utility Rate Design in Hawaii: An Initial Concept Paper	November 1, 2004
2.	Letter from Colin M. Jones, Energy Recovery Administrator, City and County of Honolulu	November 4, 2004
3.	Email correspondence from Arun Jhaveri/Eileen Yoshinaka, U.S. Department of Energy	November 9, 2004
4.	Letter from Lani D.H. Nakazawa, County Attorney, County of Kauai	November 10, 2004 (filed 11-15-04)
5.	Letter from Steven P. Golden, Director, External Affairs & Planning, The Gas Company	November 15, 2004
6.	Email correspondence from Kal Kobayashi, Energy Coordinator, County of Maui Energy Office	November 15, 2004
7.	Email correspondence from Joseph McCawley, Manager, Regulatory Affairs, KIUC	November 15, 2004
8.	Comments of Jim Lazar, Consulting Economist, Utility Rate Design Concept Paper	November 15, 2004
9.	Letter from Warren S. Bollmeier II, President, Hawaii Renewable Energy Alliance	November 15, 2004
10.	Letter (with 4 enclosures) from Maurice H. Kaya, Chief Technology Officer, Department of Business Economic Development and Tourism	November 15, 2004 (filed 11-15-04)
11.	Letter from William A. Bonnet, Vice President, Government and Community Affairs, HECO	November 15, 2004 (filed 11-15-04)
12.	Letter from Carl Freedman, Haiku Design & Analysis	November 15, 2004

<u>NO.</u>	<u>DESCRIPTION</u>	<u>DATED</u>
13.	Letter from Kyle Datta, Managing Director, Rocky Mountain Institute	November 15, 2004
14.	Letter from Cheryl S. Kikuta, Utilities Administrator, Department of Commerce and Consumer Affairs, Division of Consumer Advocacy	November 17, 2004 (filed 11-17-04)
15.	Letter of clarification from Kyle Datta, Managing Director, Rocky Mountain Institute	November 22, 2004
16.	Act 95 Workshop Agenda	November 22 - 23, 2004
17.	Presentation by Warren S. Bollmeier II, Hawaii Renewable Energy Alliance	November 22, 2004
18.	Presentation by Steven P. Golden, The Gas Company	November 22, 2004
19.	Presentation by Jim Lazar, The Regulatory Assistance Project	November 22, 2004
20.	Presentation by Manny Macatangay, Economists Incorporated	November 22, 2004
21.	Transcripts of Proceedings (Volumes I and II)	November 22 - 23, 2004 (filed 3-7-05)
22.	Commission letter to Act 95 Participants, transmitting copy of second concept paper, "Proposals for Implementing Renewable Portfolio Standards in Hawaii"	July 26, 2005
23.	Commission letter to Act 95 Participants, transmitting copy of technical paper, "Planned Computer Simulations Facilitating the Analysis of Proposals for Implementing the Renewable Portfolio Standards Provision in Hawaii"	September 23, 2005
24.	Letter from Carl Freedman, Haiku Design & Analysis	September 23, 2005
25.	Honolulu Seawater Air Conditioning LLC Comments on "Proposals for Implementing Renewable Portfolio Standards in Hawaii"	September 26, 2005

<u>NO.</u>	<u>DESCRIPTION</u>	<u>DATED</u>
26.	Email Correspondence from Kal Kobayashi, Energy Coordinator, County of Maui Energy Office	September 26, 2005
27.	Letter from Kyle Datta, Senior Director, Rocky Mountain Institute	September 26, 2005
28.	Letter from Warren S. Bollmeier II, President, Hawaii Renewable Energy Alliance	September 26, 2005
29.	Letter from William A. Bonnet, Vice President, Government & Community Affairs, HECO	September 26, 2005 (filed 9-26-05)
30.	Letter from Maurice H. Kaya, Department of Business, Economic Development & Tourism	September 26, 2005
31.	Letter from Steven P. Golden, Director, External Affairs & Planning, The Gas Company	September 28, 2005
32.	Email correspondence from Joseph McCawley, Manager, Regulatory Affairs, KIUC	September 29, 2005
33.	Transcripts of Proceedings (Volumes I, II, and III)	October 3 - 5, 2005 (filed 12-19-05)
34.	Letter from William A. Bonnet, Vice President, Government & Community Affairs, HECO	October 14, 2005 (filed 10-14-05)
35.	Letter from Maurice H. Kaya, Department of Business, Economic Development & Tourism	October 17, 2005 (filed 10-19-05)
36.	Letter from Warren S. Bollmeier II, President, Hawaii Renewable Energy Alliance	December 8, 2005 (filed 12-12-05)

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 23316 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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Certificate of Service

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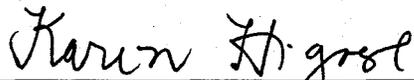
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DATED: MAR 23 2007